Supplemental Respondent's Brief

MOTION FILED
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No. 81-1271

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FALLS CITY INDUSTRIES, INC.,

Petitioner,

v.

VANCO BEVERAGE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION BY RESPONDENT VANCO BEVERAGE, INC. FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT AND SUPPLEMENTAL BRIEF

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MOTION BY RESPONDENT VANCO BEVERAGE, INC. FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT

Respondent Vanco Beverage, Inc. ("Vanco") respectfully moves this Court for leave to file RESPONDENT'S SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT, instanter.

At oral argument held October 13, 1982 some of the Justices indicated a concern over the effect of the definition of the proper geographic market of an unenforced Indiana law which prohibited consumers from importing more than one quart of beer. This issue was not raised in Falls City's Petition for Certiorari and was not briefed by the parties or by the Amicus. Because this issue was first raised by this Court at oral arguments, Vanco has not had an opportunity adequately to present its position on this issue to this Court nor to inform the Court that Falls City in its January 18, 1980 letter to the district court stated, in pertinent part, that:

> The parties also agree that Vanco's claim of indirect injury based on alleged competitive effects at the retail

level, are not controlled by the 21st Amendment or the state laws of Indiana and Kentucky.

Vanco requests that this Court allow it such an opportunity by granting leave to file the instant supplemental brief after oral argument.

Respectfully submitted,

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December 3, 1982

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v.

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SUPPLEMENTAL BRIEF AFTER ORAL ARGUMENT OF RESPONDENT VANCO BEVERAGE, INC.

I. INTRODUCTION

Oral argument in this case was heard on October 13, 1982. At that oral argument, some of the Justices asked whether it was open to the Court to address the question, not raised in Falls City's Petition, of whether the Evansville-Henderson area is one or two geographic markets. This concern was based, apparently, on the fact that an unenforced Indiana law prohibits a consumer from importing more than one quart of beer into Indiana. The district court, affirmed by the Seventh Circuit, held that the Evansville-Henderson area was a single market for retail beer sales. That finding was not challenged by Falls City in this Court.

At oral argument in this Court, counsel for Falls City stated, in response to a question of whether the existence of one or two geographic markets was a question of fact or law,

"I think that is somewhat of a mixed question." Asked whether there were one or two markets as a matter of law, counsel for Falls City responded, "Well, I think there are many factual components in that . . ." and "I'm not asking this Court to delve into the record to second-guess that determination by the lower courts" (Transcript of Oral Argument, at 5-6).

In addition to the fact that Falls City has thus abandoned its argument that there were two markets, Falls City has never relied on the Indiana nonimportation law with regard to the definition of the geographic market. The impact of that law on this case was never raised or briefed by either of the parties.

This Brief is filed pursuant to Rule 35.6, upon leave of this Court, to address for the first time the question of the effect of the Indiana nonimportation law on the definition of the proper geographic market.

II. FALLS CITY HAS WAIVED RELIANCE ON THE INDIANA NONIMPORTATION LAW AND HAS AGREED THAT THE LAWS OF INDIANA AND KENTUCKY DO NOT CONTROL THIS CASE

The importation into Indiana of quantities of beer purchased in Kentucky was technically illegal because of an Indiana statute which was described in Vanco's Brief in Chief as follows:

> By the laws of both Indiana and Kentucky, Indiana retailers were required to purchase beer from Indiana distributors, and Kentucky retailers from Kentucky distributors. However, beer consumers were free to purchase beer from the retailers of their choice.[7]

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[7] Indiana law prohibits consumers from importing more than one quart of an alcoholic beverage without a permit. Ind. Code §§ 7.1-5-4-1, 7.1-5-11-1 (1976). This law was generally not enforced. On one occasion, when consumer importation of beer became so notorious that it was reported in the newspapers, several consumers were arrested by the Indiana police.

> These arrests generated enormous controversy and no further arrests were made (Tr. 122-23, 135-36; PX 57; J.A. 134-35). Vanco's Brief in Chief, filed July 28, 1982, at 6.

That quotation is the only mention of the nonimportation law made by either of the parties to this suit in any of their briefs filed in this Court or in either of the courts below. Falls City has never disputed that the nonimportation law was hardly ever enforced and was not enforced at all after July of 1974, or that beer consumers were free to purchase beer from the retailers of their choice.[1] Furthermore, it is not disputed that it was not, and is not, illegal for Kentucky retailers to sell beer to Indiana residents and that Kentucky retailers directed advertising to Indiana residents.

In fact, Falls City has never relied on the Indiana nonimportation law as in any way creating a barrier dividing the Evansville-Henderson retail market. Thus, paragraph 2 of Falls City's Third Affirmative Defense states merely that "defendant's actions were in conformity" with the provisions of the Indiana alcoholic beverage code. Falls City never briefed that purported defense until specifically directed by the district court either to file a brief relating to this defense or to withdraw it.[2] At that point Falls City filed a brief in which it

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[1] The Government, as Amicus, has conceded that Indiana consumers traveled to Kentucky to purchase cheaper beer. Amicus Brief in Support of Petition for a Writ of Certiorari, at 6 ("Vanco . . . was indirectly injured because consumers served by its retailer customers crossed the border to buy beer at lower retail prices in Kentucky (see Pet. App. 6a-7a)"); Amicus Brief in Support of Reversal, at 5 ("As a matter of fact, however, some competition occurred along the state border, because Indiana consumers crossed the state line into Kentucky to purchase cheaper beer").

[2] The district court's order, dated November 28, 1979, was issued after the trial and after Falls City had filed its proposed findings of fact and conclusions of law and had replied to Vanco's proposed findings of fact and conclusions of law. The district court order stated that: "The parties are ORDERED to advise the Court whether or not the Third Affirmative Defense has been withdrawn, and if not

(footnote continued on next page)

never even mentioned the nonimportation law. Instead, Falls City attempted to rely on Indiana's single price law as somehow exonerating its price discrimination.

Most significantly, by letter dated January 18, 1980, lead counsel for Falls City wrote Judge Holder of the district court a letter, the first paragraph of which is as follows:

> Dear Judge Holder:
>
> We have received the Response of Vanco Beverage, Inc. to Falls City's Brief in Support of its Amended Third Affirmative Defense to Count II of Plaintiff's Amended Complaint. Although Falls City is entitled to file a reply brief, we feel nothing more needs to be said about the 21st Amendment issue in this case. The parties are in agreement that state laws given primacy by the 21st Amendment, preclude direct competition between Vanco and the Henderson, Kentucky distributor, Dawson Springs (Vanco Response, p. 6). *The parties also agree that Vanco's claim of indirect injury based on alleged competitive effects at the retail level, are not controlled by the 21st Amendment or the state laws of Indiana and Kentucky.* Instead, Vanco's claims of indirect injury depend upon issues of market definition, competitive impact, business injury to Vanco and computation of Robinson-Patman Act damages that have all been abundantly briefed. (emphasis supplied) (a copy of this letter, without the attachment thereto, is set forth in the Appendix to this Supplemental Brief).

The above statement by Falls City's lead counsel, who argued for Falls City in this Court, constitutes more than a waiver of the Indiana nonimportation law as creating two markets separating Evansville and Henderson. It constitutes forthright agreement that the "issue of market definition" in this

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(footnote continued from preceding page)

withdrawn, to brief the issue and submit findings of fact and conclusions of law in accordance with" a set schedule.

case does not depend upon any or all the state laws of Indiana and Kentucky.

As Vanco established in its Brief in Chief, the only state law on which Falls City even attempted to rely, Indiana's single-price law, had no impact on Falls City's pricing decisions. Falls City, as a matter of policy, charged a single price statewide in each and every one of the thirteen states in which it sold beer, regardless of whether a uniform price was required by state law (Vanco's Brief in Chief, at 23-24). The Indiana uniform price law could not have caused Falls City to price higher in Indiana than elsewhere. This is especially obvious since Falls City's prices in West Virginia, which had a similar one-price law, were lower than its Indiana prices (Vanco's Brief in Chief, at 16 n. 23).

Furthermore, there is evidence that in years prior to the period at issue here the price level in Indiana was the *same or lower* than in neighboring states, even though the single-price law was then in effect. The Amicus introduced evidence in *United States* v. *Pabst Brewing Company,* 384 U.S. 546 (1966), and filed that evidence in this Court, which showed that the prices charged by Pabst (which was identified by Falls City as one of its two major competitors) and by Blatz, *were the same or lower in Indiana than in Kentucky.*[3] Since the Indiana nondiscrimination law had been the law since at least 1941 (Acts 1941, ch. 237), and many years later there was no price discrimination against Indiana wholesalers, that law clearly cannot be responsible for the substantial (10% to 29%) price discrimination that later developed and was sustained for at least eight years.

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[3] For a fuller description of the evidence in the *Pabst* case, see Vanco's Supplemental Brief, filed on October 6, 1982, at 6. Furthermore, the Transcript of Record in the *Pabst* case, filed in this Court by the United States and by Pabst, shows that Pabst's prices on its principal brand were the same in Indiana, Kentucky, Ohio, Michigan and a number of other States (Transcript of Record, at 253-259).

Furthermore, the Indiana one-price law applied to all alcoholic beverages, not just beer. However, the evidence shows that liquor prices were lower in Indiana than in Kentucky. As was mentioned in oral argument, this difference in the liquor prices is evident from the testimony of Richard L. Powell, Manager of the House of Beverages.[4] The House of Beverages is located in the Old Orchard Shopping Center in Henderson, Kentucky, and had, prior to the opening of the Cut Rate Liquor store in Evansville, been the largest liquor store in the Evansville-Henderson area. Mr. Powell testified as follows (on cross-examination):

> Q. Uh, it is true sir that at the present time liquor prices in Indiana are cheaper than liquor prices in Kentucky?
>
> A. From what I can hear and they have advertised at Cut Rate cheaper liquor prices yes.
>
> Q. Is this a concern to you?
>
> A. Uh, yes in a way cause we're definitely loosing business to Cut Rate in Evansville. I've had customers come in and say they'll go over there and buy their alcoholic beverages.
>
> (PX 215, Powell dep., at 22-23.)

Since the Indiana one price law, which applies to the sale of all alcoholic beverages,[5] did not cause liquor prices to be higher in Indiana than in Kentucky, there is no reason to suppose it could have caused Indiana beer prices to be higher.

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[4] Mr. Powell's deposition was noticed by the defendant, Falls City. It was offered in evidence at trial by the plaintiff, Vanco, and admitted as PX 215.

[5] Ind. Code 7.1-5-5-7 states that: "It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. . . ."

Thus, the only Indiana statute Falls City relied upon simply does not support its case. As has been and will be demonstrated in the ensuing section of this brief, the Indiana nonimportation law also does not support Falls City. In any event, Falls City conceded that neither that law nor any of the other laws of Indiana or Kentucky were pertinent to the issues in this case. Falls City not only did not argue on the basis of the nonimportation law to the district court, but it also never argued or briefed that law on appeal. The nonimportation law was not mentioned in the questions Falls City asked this Court to review. Thus, reliance on the Indiana nonimportation law has been waived by Falls City. As this Court has repeatedly recognized, absent exceptional circumstances, questions not raised at the trial or appellate levels should not be addressed by this Court. *United States* v. *Estate of Donnelly*, 397 U.S. 286, 295 n.5 (1970); *Lawn* v. *United States*, 355 U.S. 339, 362-63 n.16 (1958); *California* v. *Taylor*, 353 U.S. 553, 557-58 n.2 (1957).

Here there are no exceptional circumstances which would justify consideration by this Court of issues as to which the record has not been developed and which the trial and appellate courts did not have the opportunity to consider and resolve. Nor was there any "plain error" in the decisions by the trial and appellate courts which would justify departure from Rule 21.1(a) of this Court, which provides that "only the questions set forth in the petition" for a writ of certiorari "or fairly included therein will be considered by this Court." To the contrary, as the discussion below establishes, to the extent the Indiana nonimportation law is relevant, it supports Vanco's position rather than Falls City's.

It is not surprising that Falls City does not and did not rely on the nonimportation law in regard to the question of the relevant geographic market. As Falls City's own contemporaneous internal reports show, Falls City was well aware that "Part of [the] decrease [in Vanco's volume] is due

to the lower prices in the Kentucky markets" (PX 12).[6] Falls City clearly recognized the existence of the single geographic market found by the district court despite the Indiana nonimportation law. That recognition accords with economic reality and with established law, which recognizes that state political boundaries are no hindrance to consumers purchasing beer in one state and transporting that beer for consumption into another state, regardless of state laws which declare such transportation illegal. This reality was recognized, in *McCormack* v. *Theo. Hamm Brewing Co.*, 284 F. Supp. 158 (D. Minn. 1968), where Judge Lord (now Chief Judge) denied Hamm's motion for summary judgment on the plaintiff's Robinson-Patman Act claim. The claim, which was almost identical to the one in this case, was based on discrimination against the plaintiff, Hamm's Duluth, Minnesota distributor, in favor of Hamm's contiguous Superior, Wisconsin distributor.

Judge Lord rejected the defendant's contention that:

> . . . state laws which prohibit distributors from selling to the same set of retailers, but which do not prohibit those retailers from competing in the same market, effectively prevent the distributors from being competitors within the meaning of the Robinson-Patman Act.
>
> * * * *
>
> This Court feels that it should not remain blind to the fact that a distributor's success depends in large part upon the success of the retailers with which it deals. In this case a Superior distributor which was the beneficiary of an unfair price discrimination could unfairly compete by passing on this price advantage to his retailers. The Superior retailers would then be able to attract more customers and prosper at the expense of the Duluth retailers, and consequently, at the expense of the Duluth distributor. In this way the plaintiff, the Duluth distributor, if not granted price terms com-

[6] See quotations from and discussions of other Falls City internal documents in Vanco's Brief in Chief, at 8.

> parable to the terms afforded the Superior distributor might suffer competitive disadvantage. For this reason summary judgment is denied the defendant upon all Robinson-Patman Act claims involving alleged price discrimination between the plaintiff and the Superior, Wisconsin distributor. (284 F.Supp., at 163.)

The applicable state law in the *Hamm's* case prohibited the importation into Minnesota of untaxed beer (Minnesota Statutes 1981 §340.601, 1976 Amendment) and, according to this opinion, this law was not relied on by Hamm.

III. FALLS CITY CAUSED THE VIOLATION OF THE INDIANA NONIMPORTATION LAW

Before turning to the legal consequences of the fact that much of the competition that resulted in injury to Vanco was the result of consumers transporting beer from Kentucky into Indiana (in excess of one quart per person), it is helpful to reiterate a number of established facts. There is, of course, no suggestion that Vanco ever violated the nonimportation law, or that Vanco's retailers violated it. Vanco's retailers and Vanco were, in fact, victims of the violation of the Indiana nonimportation law by Indiana consumers. Those Indiana consumers were induced to transport beer by Falls City's egregious price discrimination and by the active solicitation of the custom of Indiana residents by the Kentucky retailers who were the beneficiaries of that discrimination. Since it was well known that the law was not enforced, those consumers were only in technical violation of the law when they brought more than one quart of beer per person into Indiana.

Similarly, there is no dispute that the nonimportation law was generally not enforced. On one occasion, when consumer importation of beer became so notorious that it was reported in the newspapers, several consumers were arrested by the Indiana excise tax police. These arrests generated enormous controversy and no further arrests were made.[7] In fact, the evidence in the record is that after July of 1974 no arrests

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[7] Tr. 22-23, 135-36, PX 57, J.A. 134-35. A newspaper article entitled, "Beer Price 'War' Building Up Again", by L. D. Seits, an

(footnote continued on next page)

whatsoever were made in the Evansville area for transporting beer from Kentucky into Indiana.

Furthermore, as Vanco amply established at trial and as was acknowledged by the Amicus (Amicus Brief in Support of Petition for a Writ of Certiorari, at 6; Amicus Brief in Support of Reversal, at 5, 8-9, 20), the Indiana and Kentucky retailers were in actual competition with each other. The Indiana retailers lost volume to the lower-priced Kentucky retailers, some of whom advertised those lower prices in the Indiana mass media.[8]

(footnote continued from preceding page)

Evansville Press staff reporter, who testified in Vanco's case in chief, stated, in pertinent part, that:

• • •

> Prosecutor William Brune, who has questioned the intervention of Indiana excise police in the beer price war, said yesterday one of the six men arrested July 27 had said three quarts of gin confiscated in his arrest and dumped by court order was actually bought in Indiana.
>
> • • •
>
> The question of the legality came amid signs that Henderson retailers were getting increased business from Evansville beer drinkers. One retailer on U.S. 41 north of Henderson but south of the Ohio River said beer sales had increased noticeably since the publicity surrounding the arrests, indicating that some Hoosiers had been unaware of the price gap until then.
>
> The disparity in prices amounts to more than $1 a case on some beers.
>
> Major Pomolese said last week the excise police have halted surveillance such as that which brought the six arrests on July 27 until the force receives word from Brune, who has said he is investigating the matter.

[8] See Vanco's Brief in Chief, at 7-11, for a fuller description of this competition.

Finally, not all of the competition that injured Vanco was the result of possibly illegal transportation. Competition for on-premises consumption in taverns, restaurants and the like involved no illegality. Vanco demonstrated a very substantial and regular flow of people across the border in both directions to shop and work. This flow included tens of thousands of factory workers who lived in one state and worked in the other. Indiana residents working in Kentucky could choose to go down the street or to stop at The Strip for an after-work beer, and Kentucky residents working in Indiana could cross back into Kentucky before stopping for a beer. For such on-premise trade, Indiana retailers were in perfectly legal competition with Kentucky retailers. The proliferation of bars along The Strip, located in Kentucky just south of the Indiana border, testifies to the vigor of this competition.[9]

IV. APPLICABLE LEGAL PRINCIPLES

Vanco believes that the economic reality of the market and the complete congruence in this case of the purposes of the Indiana non-importation law and the Robinson-Patman Act support the finding of Falls City's liability. Further, as a matter of public policy, Falls City should not be allowed to escape antitrust liability by using as a shield asserted illegality under state law, which illegality was the direct result of its own antitrust violation.

A. *The Economic Reality of the Market.* It is a fundamental premise of antitrust law that the relevant market is the geographical and economic framework in which the parties actually compete, not artificial or political boundaries. *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 336 (1962); *United States* v. *Phillipsburg National Bank,* 399 U.S. 350, 362 (1970); *United States* v. *Connecticut National Bank,* 418 U.S. 656, 671 (1974). The courts have previously recognized the Evans-

[9] How much of Vanco's injury was caused by such legal competition is not before this Court. The point is merely that much of the Indiana-Kentucky competition was perfectly legal.

ville-Henderson area as a single market, even for a perishable commodity such as milk. *Dean Milk Co.* v. *FTC,* 395 F.2d 696 (7th Cir. 1968). The existence on the statute books of a law that was known to be unenforced did not affect the economic realities of this marketplace, and it would be inconsistent with this Court's longstanding interpretation of the antitrust laws to ignore that economic reality.

B. *The Consistency between the State and Federal laws.* In this case there is no conflict between the state nonimportation law and the Robinson-Patman Act. In fact, Falls City's violation of the Robinson-Patman Act induced the violation of state law. It was only because price discrimination by Falls City and other brewers resulted in Kentucky retail prices that were irresistibly lower than the Indiana prices that the illegal traffic developed in the first place. If Falls City and other brewers had complied with the Robinson-Patman Act, enforcement of the state law would have been unnecessary, since the motivation to violate it would not have existed. If, on the other hand, Indiana had enforced its nonimportation law effectively, the impact of Falls City's price discrimination would have been mitigated.[10] Whether, in that case, it would have been legal for Falls City to treat Evansville and Henderson as two different markets is academic, since the law was not enforced and Evansville-Henderson was in fact, as demonstrated by Vanco and known to Falls City, a single competitive retail beer market. Apparently in recognition of this fact, Falls City has never attempted to allege, even in answer to the questions posed at oral argument in this Court, that it was entitled to treat Evansville and Henderson as if they were two different markets merely because of the unenforced nonimportation law. The fact that Falls City did not even consider the statute in its pricing decision is the ultimate proof of lack of

[10] The question of whether that price discrimination would nevertheless have violated the Robinson-Patman Act because of the remaining competition between on-premises retailers is not, of course, presented by this case.

conflict between the nonimportation law and the Robinson-Patman Act. This case therefore presents no conflict between the state law and the Robinson-Patman Act.

C. *Public Policy Considerations Support Vanco.* Vanco and its retailers neither caused nor profited from the competition in interstate beer sales. That competition was the direct result of the price discrimination engaged in by Falls City and other brewers, which benefited them by allowing them to reap artificially high prices in Indiana. That competition also benefited Falls City's Kentucky wholesalers and retailers, who were quick to capitalize on the situation by advertising their lower prices in Indiana newspapers and over Indiana radio broadcasts.[11] For the largest Henderson, Kentucky beer retailer to advertise itself as the "largest in the Tri-State area"[12] was certainly an attempt to cultivate cross-over consumer purchases.

In other contexts, this Court has refused to allow antitrust defendants to shelter behind their purported attempts to comply with state law or state policies, even when the antitrust violations assertedly furthered federal and state's goals. *National Gerimedical Hospital* v. *Blue Cross,* 452 U.S. 378 (1981); *Fashion Originators' Guild* v. *FTC,* 312 U.S. 457 (1941). Here, where the antitrust violation actually caused the unenforced state law to be violated, the public policy considerations weigh heavily in favor of Vanco.

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[11] See Vanco's Brief in Chief, at 8.

[12] *Id.,* n. 14.

V. CONCLUSION

For the foregoing reasons Vanco respectfully urges the Court that the transportation home by Indiana consumers of beer purchased from Kentucky retailers, and Falls City's involvement in that trade, is a factor supporting Falls City's liability.

Respectfully submitted,

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December 3, 1982

Appendix

APPENDIX
TO
SUPPLEMENTAL
BRIEF

Zyk

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WILLIAM B. ADLER COUNSEL

January 18, 1980

The Honorable Cale J. Holder
United States District Court
Southern District of Indiana
United States Court House
Indianapolis, Indiana 46204

Re: Vanco Beverage Inc. v.
Falls City Brewing Co.,
No. EV 76-170-C

Dear Judge Holder:

We have received the Response of Vanco Beverage, Inc. to Falls City's Brief in Support of its Amended Third Affirmative Defense to Count II of Plaintiff's Amended Complaint. Although Falls City is entitled to file a reply brief, we feel nothing more needs to be said about the 21st Amendment issue in this case. The parties are in agreement that state laws given primacy by the 21st Amendment, preclude direct competition between Vanco and the Henderson, Kentucky distributor, Dawson Springs (Vanco Response, p. 6). The parties also agree that Vanco's claim of indirect injury based on alleged competitive effects at the retail level, are not controlled by the 21st Amendment or the state laws of Indiana and Kentucky. Instead, Vanco's claims of indirect injury depend upon issues of market definition, competitive impact, business injury to Vanco and computation of Robinson-Patman Act damages that have all been abundantly briefed.

While we, therefore, do not believe it necessary to file a reply to the Vanco Response, we would like to take this opportunity to call to the Court's attention the recent decision by the Court of Appeals for the Fifth Circuit in Chrysler Credit

Corp. v. J. Truett Payne, Inc., 1980-1 Trade Cas. ¶63,067 (5th Cir. 1979). In that case, the court reversed the denial of a directed verdict for defendant on the ground that plaintiff had failed to introduce the requisite substantial evidence of injury resulting from the alleged price discrimination. In rejecting evidence similar to that offered by Vanco here, the Court held: "Conclusory statements by the plaintiff, without evidentiary support, as to the fact of damage caused by the alleged antitrust violation are not sufficient." [Id. at 77,307].

The Court in Chrysler Credit also aligned itself with the numerous other courts that have rejected the contention, made here by Vanco, that damages under Section 2(a) of the Robinson-Patman Act are determined merely by multiplying the amount of the price difference by the number of products sold. (See Vanco Post-Trial Brief at 18-19; Falls City Post-Trial Brief at 36-39; Falls City Reply at 31-33). The Court stated:

> Payne relied on its calculation of the alleged price discrimination to establish the amount of its alleged lost sales and profits. There is no necessary correlation, however, and Payne failed to establish one.
>
> * * *
>
> A price difference without more does not indicate the amount of lost sales or profits. [Id. at 77,308, 77,309].

On this ground, as well, the court held defendant was entitled to a directed verdict.

A copy of the Chrysler Credit opinion is enclosed for Your Honor's convenience.

Very truly yours,

Howard Adler

Howard Adler, Jr.

HA:wlm
Enclosure

cc: John T. Cusack, Esquire
James W. Bradford, Esquire